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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MATEO V., a Person
Coming Under the Juvenile
Court Law.

B292025
(Los Angeles County
Super. Ct. No. 18CCJP01542A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

GILBERTO G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Natalie P. Stone, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

Gilberto G. (father) appeals from the juvenile court's order removing his 22-month-old son, Mateo V. (Mateo), from his custody. Father contends that the removal order must be reversed because it was not supported by clear and convincing evidence and because there were other reasonable means to protect Mateo without removing him from father's custody. For the reasons set forth below, we affirm.

BACKGROUND

I. Referral and initial investigation

The Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging domestic violence between mother and father and that they were abusing drugs daily.

DCFS visited mother's home and spoke to both parents. Neither parent appeared to be under the influence of drugs or alcohol. Father indicated that Mateo lived with paternal grandmother. Father said he used marijuana two or three months before. Shortly after the referral, father submitted to drug testing and had a blood alcohol level of .06 percent. Father admitted that he would drink a couple of beers on the weekend but denied drinking before the test. Father agreed to stop drinking while the investigation was ongoing, but also said that if he did decide to drink, he would not drink around Mateo. Mother said that she had "used everything" when she was younger, including methamphetamine.

The parents denied any domestic violence. However, mother's landlord, who lived directly behind mother's home, heard the parents fight which included screaming and throwing objects. Maternal grandmother was aware of incidents of domestic violence in the presence of Mateo. Additionally, during the investigation, DCFS received another referral alleging mother had injured father. Father admitted to police that there had been two other incidents of domestic violence with mother. Mother told DCFS that father had physically abused her as recently as December 2017 but denied the new allegations of domestic violence.

DCFS made an unannounced visit to paternal grandmother's house where Mateo lived with his paternal grandparents, father, and aunt. Mateo appeared to be healthy and developmentally on track. The house was adequately furnished, sufficiently stocked with food, and had age-appropriate toys for Mateo. Paternal grandmother said that Mateo was there "24/7" and that mother had difficulty caring for him because he was an active child. Father comes and goes, sometimes staying with mother and sometimes with paternal grandmother. She thought the parents had not transferred legal guardianship of Mateo to her because they relied on the government benefits they received for him.

II. Detention

DCFS filed a juvenile dependency petition alleging parents had a history of substance abuse which posed a risk of harm to Mateo, and that each parent knew of each other's history but failed to protect Mateo from harm. The juvenile court found a prima facie case that Mateo was a person described in Welfare and Institutions Code section 300, subdivision (b) and that

remaining with his parents was contrary to his welfare. The juvenile court detained Mateo from his parents.

III. Adjudication

At the jurisdiction hearing, father moved to dismiss the petition. Mother made a similar motion and joined in father's argument to dismiss the allegations that mother failed to protect Mateo from father. The juvenile court denied the motions and father called paternal grandmother, with whom Mateo had been placed, to testify. She testified that she was Mateo's primary caregiver and would never leave Mateo alone with father because he had little patience with children. She said father drinks alcohol every day. When father came home drunk, he liked to argue, so she would bring Mateo into her room. She said that she would protect Mateo from father and agreed to prevent father from caring for Mateo if he were under the influence. Paternal grandmother denied father had lived with her since Mateo was detained but prior to that, father had lived with her his entire life.

The juvenile court admitted the DCFS jurisdiction report which included statements from paternal grandmother and maternal grandmother. Paternal grandmother denied seeing domestic violence between the parents and said Mateo was in her care at least five days a week. Mother would take Mateo once or twice a week though sometimes not at all. Maternal grandmother said mother used drugs and confirmed that paternal grandmother cared for Mateo most of the time. When mother is under the influence, she becomes aggressive with maternal grandmother. The parents did not make themselves available to be interviewed for the jurisdiction and disposition report.

DCFS introduced a statement from mother admitting that she smoked marijuana once a week and had a history of substance abuse. Mateo stayed with her three days out of the week with the remaining four days spent with paternal grandmother. Mother would sleep at the paternal grandparents' home one to two nights a week while Mateo slept in the paternal grandparents' bedroom. Mother acknowledged father drank four days a week and would "flip out" when told that he should stop drinking. She believed she and father needed to get help and that father should attend anger management classes. Mother continued to deny any incidents of domestic violence.

The juvenile court sustained both counts against the parents and found them to have substance abuse issues placing Mateo at risk of serious physical harm and rendering them incapable of providing regular care. The juvenile court was not persuaded that paternal grandmother could protect Mateo from father when he came home intoxicated even if she kept Mateo in another room.

IV. Disposition

At disposition, the juvenile court received testimony from father and admitted evidence that he had missed three drug tests and an appointment with DCFS. The last minute information report also included a statement from paternal grandmother that if parents failed to reunify, she would pursue legal guardianship.

In his testimony, father claimed he missed the drug tests due to his work schedule and that he was unaware he was supposed to test after DCFS filed the petition. He could provide financially for Mateo, but his work schedule was "semi-consistent." He denied drinking any alcohol since his last positive test and promised to submit to testing if Mateo were

returned to his custody. He expressed his desire to live with paternal grandmother and Mateo.

The juvenile court found that DCFS made reasonable efforts to prevent removal, but that there were no reasonable means to protect Mateo without removing him from his parents' care. The juvenile court explained its decision as follows: "We did have the testimony at the adjudication hearing from the paternal grandmother, and we have lots of evidence in the reports that the father frequently comes home intoxicated. There's evidence that he's aggressive when he's under the influence. There's evidence of domestic violence likely connected to being under the influence. And there's evidence that he, in fact, is an alcoholic, and he needs a full program." The juvenile court declared Mateo a dependent of the court and allowed paternal grandmother to monitor father's visitation.

DISCUSSION

On appeal from a dispositional order removing a child from a parent we apply the substantial evidence standard of review, keeping in mind that the juvenile court was required to make its order based on the higher standard of clear and convincing evidence. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.) We review the evidence in the light most favorable to the juvenile court's findings and indulge all reasonable inferences in support of upholding the trial court's order. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) We consider whether there is substantial evidence to support the juvenile court's conclusion, not whether there is evidence from which it could have drawn a different conclusion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) Because it is not the function of the reviewing court to determine the facts, it is difficult for appellant to show a lack of

substantial evidence. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) “If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

Father argues that the record does not support the juvenile court’s finding that there were no other reasonable means to protect Mateo without removal. Specifically, father contends Mateo could have been placed with the father subject to the conditions that they reside with paternal grandmother and that he submit to drug testing. Father insists the record shows that paternal grandmother was capable of caring for Mateo and that, under her care, Mateo was healthy and developmentally on track. Father also points out that the juvenile court was sufficiently satisfied with paternal grandmother’s ability to protect Mateo from father because it ordered that she be the monitor for father’s visitation. Father also submits that he was willing to continue to submit to drug testing and that he only tested positive for alcohol on one occasion.

Father’s contentions ignore that the juvenile court was not persuaded by paternal grandmother’s testimony that she could always protect Mateo from father, questioning the sustainability of paternal grandmother’s practice of taking Mateo into her room when father came home drunk. The juvenile court found Mateo’s living situation with paternal grandmother akin to a petition where one parent fails to protect the child from the other parent who is an alcoholic and that, but for removal, father would still be living with Mateo. The juvenile court noted that the father frequently came home intoxicated, was aggressive, and that there was evidence of domestic violence, likely as a result of substance abuse. These facts support the juvenile court’s finding that

Mateo could not be protected by limiting father's access or requiring monitored visitation.

Accordingly, there is substantial evidence in the record to support the juvenile court's removal order.

DISPOSITION

The order is affirmed.

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DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.